

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3700(d), Oak Mortality Disease Control

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligations of the California Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3700 is to provide authority for the State to mitigate the effects of oak mortality disease (sudden oak death) on the agricultural industry, which includes native tree stands, by establishing a program to arrest the artificial spread of the disease to additional areas; thereby protecting California's agricultural industry and environment.

The factual basis for the determination by the Department that amendment of Section 3700(d) is necessary is as follows:

The Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. The Department adopted Section 3700 to implement a program to arrest the artificial spread of the disease. Continued action is necessary to contain and minimize the destructive impact of this pest and disease. However, the Department has determined that it is no longer feasible to restrict the

movement of all of the articles and commodities covered within the regulated area. The Department imposed the restrictions on movement within the regulated area to prevent the further spread of the disease, which is not uniformly distributed, within the regulated area. The Department's intent was to develop acceptable disease survey and delimitation protocols to establish some areas within the regulated area as free from the pathogen, *P. ramorum*. It was also the Department's intent to determine if feasible eradication procedures could be developed and implemented for some areas, then survey and declare those areas free from the pathogen, *P. ramorum*.

Except for nurseries, no eradication or survey/delimitation protocols have been developed for use within the regulated area that are acceptable to other states, the United States Department of Agriculture and our trading partners. The ability of the pathogen to establish itself in the environs within the regulated area and the detection of numerous new hosts and associated hosts has been a major stumbling block in developing acceptable protocols. Associated hosts are those where the pathogen has been detected but the scientific standards of Koch's Postulates, which are the established procedures for determining proof of pathogenicity, have not been completed. As of October 8, 2003, there are 22 hosts and 16 associated hosts that are recognized by local, state, federal, and international regulatory agencies.

Except for two of the regulated counties, Humboldt and Solano, the pathogen is well established in the environs and cannot be eradicated. In the future, if acceptable eradication and/or delimitation survey protocols are developed, it may be feasible to deregulate major portions of Humboldt and Solano counties and smaller portions of other counties.

Currently, there are numerous arborists, landscape/garden companies, homeowners, garbage companies, and city, county and state agencies, etc., moving green waste or firewood or other articles and commodities covered within the regulated area and the Department and the county agricultural commissioners do not have the resources necessary to enforce control. The Department has determined that the resources that would be necessary to effectively enforce the regulations within the current regulated area outweigh the benefits of such enforcement. The Department has also determined that such enforcement activities would

not be biologically sound as there is not an acceptable or feasible eradication component.

Except for nursery stock, preventing the possible artificial spread of this disease within the regulated area through all of the potential artificial pathways is no longer a reasonable expectation. This creates an unfair economic and regulatory burden on the nursery industry located within the regulated area.

With current resources, the Department and the affected county agricultural commissioners cannot enforce both the restriction on movement within and from the regulated area. Additionally, enforcement within much of the regulated area is no longer biologically sound, as the disease is well established. Therefore, the regulatory focus should be to prevent the spread of the disease from the regulated area to unregulated areas.

The Department amended this regulation because it is necessary to modify the authority for an established statewide program in order to direct existing resources to arrest the artificial spread of the disease to unregulated areas. The amendment removed restrictions that cannot be enforced by the Department and affected agricultural commissioners. Additionally, such restrictions are no longer biologically sound as there are no generally accepted survey and eradication components for within the regulated area. Finally, the prohibitions on movement within the regulated area created a reimbursable state mandate at the local level that cannot be funded by the State.

Immediate amendment of this regulation was necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands.

In addition, because the spread of the disease threatens the agricultural industry of California, its potential spread to the unregulated areas constituted an emergency necessitating immediate action to arrest the spread of the pest. Specific facts and circumstances clearly also indicated that the spread of oak mortality disease presented a clear and imminent danger to property and, therefore, constituted an emergency. The Department was therefore compelled to take immediate action to mitigate the damage to property and

preserve the general welfare.

The Department has determined that *Phytophthora ramorum* is a serious forest pest for which control is required to prevent further spread and harm to forests, parks, commercial and urban landscapes, and watersheds. This disease is known to occur in twelve California counties. Oak mortality disease is serious due to the fact that it kills tanoak, coast live oak, and black oak trees. The pest has been confirmed as infecting canyon live oak and Shreve's oak and non-oak species such as andromeda, camellia, rhododendron, huckleberry, bigleaf maple, California buckeye, California coffeeberry, coast redwood, Douglas-fir, laurustinus, manzanita, toyon and Western star flower causing foliar and stem disease symptoms.

The amendment of Section 3700(d) removed the restrictions on moving the articles and commodities covered within the regulated area. This enabled the Department to direct its resources to preventing the spread of the disease to unregulated areas. If the disease is allowed to spread and become established in these unregulated areas, California's agricultural industry will suffer losses due to the death of trees in native stands and ornamental plantings and loss of markets due to the federal domestic and other countries quarantines enacted against California products.

To prevent artificial spread of the disease to unregulated areas to protect the California agricultural industry and to coordinate enforcement activities with affected persons, businesses and the county agricultural commissioners, it was necessary to remove restrictions on the movement of the articles and commodities covered within the regulated area effective November 15, 2003. Therefore, it was necessary to amend Section 3700(d) on an emergency basis.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3700 does impose a mandate on the local agencies, but not on school districts. The agricultural commissioner of a county that is regulated has a duty to enforce the regulation and there is an on going mandate created by the original adoption of this

regulation. However, the amendment of this regulation, removing restrictions on the movement of articles and commodities covered, does not impose a new mandate on the local agencies. No additional reimbursement is required for Section 3700 under Section 17561 of the Government Code because this action removed the restrictions within the regulated area of this regulation; therefore, no enforcement activities are required.

The Department has also determined that the amended regulation will involve no additional costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs. The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the amendment of Section 3700, subsection (d):

“Revised Enforcement Policy and Amendment of the California Code of Regulations Section 3700, Oak Mortality Disease Control,” Phytosanitary Advisory No. 17-2003, October 28, 2003, California Department of Food and Agriculture, Plant Health and Prevention Services, Permits and Regulations.

E-mail of October 24, 2003 to Stephen Brown from Gail Raabe to Nick Condos.